

It seems the focus of the FCC has changed from trying to resolve competing applications to revenue generation. An auction should be held only as a last, desperate measure not as a routine operating procedure. Only hold an auction if mutually exclusive applications still exist after any and all challenges by other applicants and no other settlement arrangements can be worked out among the remaining mutually exclusive applicants within a given timeframe. A study is required among those other than legal representatives of existing licensees to be certain whether the auction procedure has resulted in any hardship eliminations for those who were ultimately unsuccessful in the auction.

PP 54: Perhaps here is where FM with its special circumstances and requirements is most arguably a category whose applicants deserve a different approach to determine mutual exclusivity. Technical and other merits are required to be able to execute the process. If a form of combinatorial bidding were used, a method must be provided to insure a single participant who is bidding on a single C.P. cannot lose his position in the process to a combination bid.

PP 56 & 57: Determining and setting an up front payment and minimum bid amount for an auction would be most contrary to the public interest in that it would favor larger corporations and their larger budgets and could effectively eliminate newcomers from entering the field. Are these expenses in addition to the application fee and necessary preliminary work and under what circumstances are they refundable? What about those who have already paid the \$2470.00 fee for FCC 301? This policy also puts the FCC in the appraisal business. What happens in an area where there are no real comps?

PP 60: As stated, none of the existing filing procedures was designed to work in conjunction with the auction of mutually exclusive applications because an auction was not considered as a viable method to resolve the problems. No applications should be accepted unless they are submitted in response to a definite filing period. If a filing window passes with no applicants, allow it to remain dark for a period of time and then renote. Allowing time for market changes in any given area might be the only catalyst needed.

This proposed procedure will only increase the number of mutually exclusive applications for any given filing window and thus result in greater numbers participating in the auction. This will result in a higher winning bid amount and further elimination of the small entity which is necessary in order to achieve maximum diversity of the airwaves.

PP 61: The FCC saw the need to impose a temporary freeze on further applications which is effective upon the release of this NPRM. If a freeze for future applicants is necessary based on the release of this NPRM it is only logical that those who were already in the process should not be bound to any of the conditions of this NPRM, only to those procedures which were in effect at the time of filing.

PP 62: Any resources expended as part of the long form process are not unnecessary and wasteful, but should be construed as only a small part of a complete business plan and expected start-up expenses. Undertaking this task at the beginning will only better enable

potential applicants to more realistically and accurately understand what will be required to complete the project and to prepare for potential problems. The expenses encountered in the filing of FCC 301 have the potential to be relatively insignificant compared to what some of the auction amounts might be.

The FCC has expressed concern about the cost of filing a long form application during the pendency of this rulemaking but does not address the issue of those who filed prior to the release date of this NPRM (11/26/97) and after the July 1, 1997 date. Certain applicants are expected to adhere to a set of rules which was not even in existence at that time they filed. Those who have already incurred the burden of filing the long form are entitled to compensation and should not be expected to adhere to the conditions of this NPRM as they completed FCC 301 in good faith with what were represented to be the existing operating procedures at the time.

The term "auction window" is used only here. Is this in addition to, or instead of, a filing window? If it is indeed instead of an auction window, it further helps illustrate the direction away from that of a regulatory board.

PP 68, 69 & 70: Pre-auction processing needs to be able to better qualify applicants and their realistic impressions of the work ahead. In addition to FCC 175, the technical information necessary to effect completion should be prepared ahead. This would not constitute any form of burden and might actually prevent burden if a bid winner does his post-auction engineering work and then finds his proposal to be unfeasible.

A pre-auction engineering review is certainly needed in the case of FM. Any deficiencies found in this part of the review of the application should result in its disqualification. Among but not limited to the qualification criteria could be: Timely filing in response to a filing window, Satisfaction of line-of-sight requirement, Ability to acquire that site, Precision of technical data, Satisfaction of public notice requirements. The proposed procedure not to review applications except to decide mutual exclusivity could result the auction winner not having the technical merits to fully execute the project resulting in the possibility for repeated auctions for the same C.P.

As part of the pre-auction review, allow all mutually exclusive applicants file petitions to deny a competing application if sufficient deficiencies of technical merit or other required aspects are found within that application. Throughout the process of the allocation and now the application for the C.P., I was informed that I was expected to meet the requirements of FCC 301 to the letter of the law and that lack of satisfaction of any requirement could result in the ultimate dismissal of my application. Yet I find myself in a position where all of the other mutually exclusive applications have a flaw of one kind or another, a flaw that I was under the impression could result in my disqualification if I were to make the error. The rules and instructions on an official U.S. Government document (FCC 301) will be rendered as being useless during the time that it was the supposed to be the proper document, if the proposed set of rules is allowed to be adopted as it is now stands.

PP 73: The removal of competing applications should be encouraged at any time throughout the process. Being able to reach a settlement agreement between competing applicants will only help to free up the Commission's affairs and prevent a backlog of

cases. To hold an auction in the case where a settlement could otherwise be arrived at, is only a means of generating revenue and not in the best public interest.

PP 76, 77 & 78: A period of 30 days is more than sufficient to prepare a long form, especially if all required engineering work is done ahead. What is the vehicle by which other non-winners will be informed as to the validity of the bid-winner's application and be given the opportunity to file a petition to deny? The requirements of the auction and the lack of the need for engineering work to be done in advance by all applicants, will result in a lesser ability of other applicants to question the merits of FCC 301 of the bid winner and therefore be unable to file what may be a valid petition to deny. The ability to compare engineering data would serve as a system of checks and balances regarding the design standards of any applicant.

A five day notice is insufficient in order to prepare and file a petition to deny. If engineering work is not done in advance, it does not afford any of those who might wish to challenge technical data enough time to do the necessary research.

If FCC 301 instructions were explicitly followed and enforced and design criteria required, there should be no questions relating to a technical proposal and therefore no changes necessary. Once the form is submitted, no significant changes should be allowed or it would result in its disqualification. Fictitious, inaccurate (deliberate or not) data could be submitted up to this point with no means for other mutually exclusive applicants to effectively challenge the data.

PP 81: Ability of the applicant to secure a reasonable assurance of the use of a site may be the most important aspect leading to the completion of the project. Throughout the rules and regulations, it seems that flat terrain is assumed. In mountainous terrain, as long as line-of-sight is still a required criteria, inability to secure the site could pose real problems. In my situation, I have secured the only site which meets the line-of-sight requirement. In this case, the terrain prohibits multiple sites from satisfying the line-of-sight requirement. In such instances, lack of advance permission from the sole property owner whose land can satisfy this requirement could result in the bid-winner's inability to perform. Reasonable assurance of the use of a valid site could be one of the most important criteria for the completion of construction and lack of it could result in the total failure of the project.

PP 92: The potential for large group owners to prevail over newcomers to the field is very real, thus resulting in lack of diversification of ownership. The use of bidding credits or any other form of preferential treatment will only be challenged in the courts and should not be relied on as a means to settle the issue. Refine, strengthen and adhere to the existing criteria and enforce them as a routine part of determining a valid application.

Respectfully submitted,


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24 July 78